

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 104 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

Sd/-

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
? **1 & 2 YES; 3 to 5 NO**

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BANSILAL BABUJI VANJARA - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR RG CHHARA for Applicant(s) : 1,

MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 04/04/2007

ORAL JUDGMENT :

1. The petitioner has invoked the provisions of section 397 of the Code of Criminal Procedure, 1973 (for short, "the Code") upon being convicted and sentenced to two years of rigorous

imprisonment and fine of Rs.3000/- for the offences punishable under section 304-A and 279 of the Indian Penal Code, 1860 and sections 184, 177 and 134 of the Motor Vehicles Act, 1988; and after that order dated 12.3.1998 of learned Metropolitan Magistrate being confirmed by the judgment and order dated 22.1.1999 of learned Additional Sessions Judge in his Criminal Appeal No.40 of 1998. Both the lower courts have recorded concurrent findings of fact after appreciation and analysis of evidence regarding identity and negligence of the petitioner and rejected the prayer of granting the benefit of probation to the petitioner.

2. Learned counsel for the petitioner, Mr.R.G.Chhara, referred to the evidence of eye witnesses at Ex.7, 10 and 14 to reiterate that negligence was inferred without sufficient basis and evidence and that, in absence of identification test parade, identity of the petitioner could not be established beyond doubt. He relied upon the judgment of the Supreme Court in ***Kanan and others v. State of Kerala [AIR 1979 SC 1127]*** to submit that an unknown person seen by a witness for the first time could not be identified by that witness for the first time in court and it would be unsafe to rely upon such

bare testimony of a witness. He relied upon the judgment in ***Mahadeo Hari Lokre v. State of Maharashtra [1972 Cri.L.J. 49]***, ***Tukaram Sitaram Gore v. State [1972 Cr.L.J.767]***, ***Suleman Rahiman Mulani v. State of Maharashtra [AIR 1968 SC 829]*** and ***Padmacharan Naik v. Sate [1982 Cr.L.J. NOC 192]*** to submit that, if a pedestrian suddenly crosses road without taking note of an approaching bus, there was every possibility of his dashing against the bus without the driver becoming aware of it. In such circumstances, the driver cannot save accident howsoever slowly he may be driving and, therefore, he cannot be held to be negligent. High speed may not in each case be sufficient to hold that driver was rash or negligent; nor can negligence be inferred from the fact that accused ran away from the spot and error of judgment on the part of the driver by not applying brakes at relevant time, by itself, does not constitute rash and negligent driving. And that there can be no presumption of negligence from the mere fact that a man was knocked down and killed by a motorist. Mr.Chhara also submitted that a period of about 15 years had already passed since the accident and imprisonment of the petitioner now may disrupt his difficult life.

3. Learned A.P.P. pointed out from the evidence on record, particularly the deposition of witness Shri Bhikubhai Naranbhai (Ex.14) that there was a police constable on duty at the spot and, at the time of accident and immediately after the accident, he had chased the truck which had knocked down the unfortunate girl aged seven and then that witness had taken the petitioner to the police station and made him sit there. Thus, not only that there were eye-witnesses to the accident but the petitioner was practically caught red-handed by a chase by a police constable and he was taken to the police station by that independent witness. Therefore, there could not be a reasonable doubt about identification of the petitioner as the person who was driving the truck at the time the accident had happened. Learned A.P.P. also pointed out from the map of the scene of offence which clearly revealed that, while the truck was going on the main thoroughfare from south to north, the ill-fated young girl was crossing the road from east to west and she had already covered 35 ft. of the road. There was sufficient time and margin for the driver to see that the young child was crossing the road and he could have applied brakes instead of knocking down the girl only 17 ft. away from the kerb. The map of the scene of offence based on panchnama is

substantiated by the panchnama at Ex.16. No brake-mark was found on the road, according to the panchnama at Ex.13 which indicated that the driver was completely oblivious of his duty to watch the road on which he was driving.

4. In the above facts and circumstances, the concurrent findings of fact recorded by both the lower courts are not required to be interfered and there is no failure of justice justifying interference with the impugned judgments as far as conviction of the petitioner is concerned.

5. It was argued on behalf of the petitioner that it was the first and only accident committed by the petitioner and there was no previous record of any other offence against his name, that he was a poor labourer with responsibilities of his family including his children and old parents and, therefore, the benefit of probation should be granted or the order of sentence should be suitably modified. Learned A.P.P. submitted that, in case of offence under section 304-A of the IPC, the benefit of probation cannot be granted as held by several judgments of this court and the punishment of rigorous imprisonment for two years was justified. It was pointed out from the judgment of this court in **Bhavanisinh**

Vaghubha Zala v. State of Gujarat [2003(3)GLH 1] that, in case of similar offences punishable under sections 379 and 304-A of the IPC wherein three persons were killed and two persons were injured, the court had upheld rigorous imprisonment for one year and fine of Rs.1,000/-, after referring to the judgment of the Supreme Court in State of ***Karnataka v. Sharanappa Basnagouda Aregoudar [2002 AIR SCW 1413]*** and in ***Dalbir Singh v. State of Haryana [2000 AIR SCW 1653]***.

6. Having regard to the above facts and circumstances, the present petition is partly allowed so as to confirm the conviction of the petitioner and modify the order of sentence to the extent that the petitioner shall undergo rigorous imprisonment for a term of six months. The fine imposed by the impugned order is stated to have already been paid. Bail bond furnished by the petitioner shall be cancelled and the petitioner shall surrender to jail on or before 13.04.2007. The period of imprisonment already undergone by the petitioner shall be set off against the total period of imprisonment of six months. Rule is made absolute to the aforesaid extent with no order as to costs. Sd/

(D.H.Waghela, J.)